IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Smt. Dhanni Devi & Others Vs. State of Raj.
(D.B. Criminal Appeal No.1314/2002)

D. B. Criminal Appeal under Sec.374(2) Cr.P.C. against the judgment dated 24-9-2002 in Sessions Case No.14/2001 passed by Sh. Kamal Kumar Bagri, RHJS, Additional Sessions Judge (Fast Track) Sikar.

Date of Judgment: July 03, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE R.S.CHAUHAN

Mr. Arvind Kumar Gupta] for the appellants.
Mrs. Alka Bhatnagar]
Mr. Harsh Saini]

Mr. M.L. Goyal, Public Prosecutor for the State.
Mr. V.R.Bajwa, for the complainant.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Challenge in this appeal is to the judgment dated September 24, 2002 of the learned Additional Sessions Judge (Fast Track) Sikar whereby the appellants, four in number, were convicted and sentenced as under:-

Dhanni Devi, Mohini Devi, Raju @ Rajendra and Mohan Lal:
U/s.302/149 IPC:

Each to suffer imprisonment for life and fine of Rs.2000/-, in default to further suffer three months simple imprisonment.

U/s.148 IPC:

Each to suffer rigorous imprisonment for one year and fine of Rs.500/-, in default to further suffer one month simple

imprisonment.

U/s.452 IPC:

Each to suffer rigorous imprisonment for two years and fine of Rs.1000/-, in default to further suffer two months simple imprisonment.

U/s.201 IPC:

Each to suffer rigorous imprisonment for one year and fine of Rs.500/-, in default to further suffer one month simple imprisonment.

Appellants Dhanni Devi, Mohini Devi and Raju @ Rajendra were also convicted and sentenced under section 323/149 IPC whereas Mohan Lal was convicted under section 323 IPC:

Each to suffer rigorous imprisonment for six months and fine of Rs.200/-, in default to further suffer fifteen days imprisonment.

All sentences were directed to run concurrently.

2. The prosecution case as unfolded during trial is that on January 11, 2001 Police Station Sadar Fatehpur received a telephonic message that one Mohan Lal pushed a lady into the well. Kanhaiya Lal, ASI (Pw.20) along with police party thereafter rushed to the place of incident where informant Bajrang Lal (Pw.1) gave him a written report wherein it was stated that on the said day around 9 AM while he was away from his house carrying buffaloes out side of his field, he heard hue and cry towards his house. He then saw Ram Kumar, Mohan Lal, Ranjeet, Raju, Mohini Devi and Dhanni Devi lifting his wife and they were about to drop her into the well. She appeared to have been killed by them. When the informant prevented them from pushing her into the well, Mohan Lal inflicted Barchhi blow on his head as a result of which he became unconscious. On regaining consciousness he raised alarm. The assailants killed his wife on account of property dispute. On that report case was registered and investigation

commenced. After usual investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) Sikar. Charges under sections 147, 148, 323, 452, 201 and 302/149 IPC were framed against the appellants, who denied the charges and claimed trial. The prosecution in support of its case examined as many as 21 witnesses. In the explanation under section 313 Cr.P.C., the appellants claimed innocence. No witness in defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above.

3. We have heard the submissions of learned counsel for the appellants, learned Public Prosecutor and learned counsel for the complainant and with their assistance scanned the entire evidence on record.

4. As per postmortem report (Ex.P-16) deceased Chhoti Devi sustained following ante mortem injuries:-

1. Incised wound 18cm x 5cm x bone deep at left gluteal region
2. Abrasion 5cm x 2cm x t left gluetal region.
3. Abrasion 3x1cm at lower 1/3 of left thigh
4. Incised wound 10cm x 4cm at right ankle medial aspect causing compound fracture of lower end of both leg bones.
5. Swelling with deformity Right thigh causing fracture of right femur
6. Abrasion 5cm x 4cm at right thigh anteriorly middle.

The cause of death in the opinion of Dr. C.L.Sharma (Pw.6), who was member of the Board who performed autopsy on the dead body, was hemorrhagic shock due to ante mortem injuries.

5. Coming to the evidence of star witnesses of the prosecution we noticed as under :-

(i) Bajrang Lal (Pw.1) in his deposition stated that the appellants took his wife to the well and gave beating. When they were about to push her into the well, he prevented them from doing so. Mohan Lal then caused injury on his head with the blunt side of Barchhi and pushed his wife into the well. Before the police arrived the dead body of his wife had already been taken out of the well by one Shri Ram. He further stated that he got the report written by one Sanwra much prior to the arrival of the police. On showing the photograph (Ex.D-3), he deposed that it was the photograph of nude dead body of his wife.

(ii) Karni Singh (Pw.2) deposed that the appellants dragged injured Chhoti to the well and when Bajrang Lal prevented then Mohan Lal gave Barchhi blow with blunt side of Barchi on his head and they pushed Chhoti into the well. Karni Singh admitted that he became silent spectator through out and did not intervene.

(iii) Gom Singh (Pw.7) stated that after beating Chhoti the appellants dragged her and there was a trail of blood.

(iv) Bhanwni (Pw.8), Taramani (Pw.9), Shyam Lal (Pw.10) and Subhash (Pw.11) corroborated the version narrated by Bajrang Lal.

6. What emerges out of the aforequoted evidence is that Mohanlal (appellant) and informant Bajranglal (PW.1) are real brothers. Chhoti (deceased) was the wife of Bajranglal. There was a land dispute between

Bajranglal and Mohanlal. On the fateful day Mohanlal and his other family members came armed with deadly weapons and entered the house of Bajranglal who was not in the house but his wife Chhoti was there who at the relevant time was cooking food. Mohan Lal, Raju, Mohini Devi and Dhanni Devi caused injuries on the person of Chhoti and took her to the well belonging to Bajranglal. The well was 50 yards away from the house. When the assailants were about to drop Chhoti into the well Bajranglal arrived at the spot and prevented them from pushing Chhoti into the well. Mohanlal then inflicted blow with Barchhi from the blunt side on the head of Bajranglal who became unconscious and Chhoti was pushed into the well by the assailants. Some body informed about the incident on telephone to the police. But before the police arrived one Shri Ram got nude dead body out of the well. The written report was drawn by one Sanwra much prior to arrival of the police.

7. During the course of arguments we asked learned counsel for the complainant and learned Public Prosecutor to explain certain improbabilities noticed by us in the prosecution story. Following questions were put to learned counsel -

(i) Why Mohanlal who had land dispute with his brother Bajranglal, killed Bajrang Lal's innocent wife Chhoti and spared Bajrang Lal?

(ii) Why the dead body of Chhoti was found stark naked? Under what circumstances she was undressed and who did this act of shame?

(iii) When assault was made on Chhoti in the house and she

was nearly dead why she was lifted and taken to the well which was fifty yards away from the house?

(iv) Why Shri Ram and Sanwra were not examined?

8. Learned counsel for the complainant and learned Public Prosecutor termed these questions hypothetical and gave evasive reply. Per contra learned counsel for the appellants canvassed that right from the very beginning the defence of the appellants was that it was Bajranglal who killed his wife and falsely implicated the appellants. The prosecution witnesses examined at the trial were under the influence of Bajranglal. Learned counsel further urged that the incident occurred on January 11, 2001 but the report (Ex.P.24) reached to the Ilaqa Mgistrate on January 15, 2001 despite the fact that court of Ilaqa Magistrate situated just in front of Police Station Sadar Fatehpur.

9. We now proceed to consider the judicial pronouncements referred to by learned counsel for the complainant.

10. The Apex Court in Ramamurthy vs. State of Karnataka JT 2002 (8) SC 314 indicated thus (Para 9)

> "The argument that when Ramamurthy had gone out, he had better opportunity of doing away with deceased rather than at the house of PW.2 does not carry the matter far because the manner in which or the place where the crime should be committed would depend upon the attitude of the accused. He might have thought that doing away with the deceased inside the house will have less chance of discovering of his acts rather than in an open area. In the circumstances, we find that none of the arguments suggested against the conclusions reached by the High Court can be sustained."

11. In State of Punjab vs. Pohla Singh JT 2003 (Supp.1) SC 406 their Lordships of the Supreme Court observed as under:- (Para 14)

> "The High Court has raised a question of conjecture as to why somebody would choose a day break time to commit a murder. Since the question is hypothetical and the answer to it would also be hypothetical. What is in the mind of a person and the reason for doing a thing is an aspect within the special knowledge of the accused. The prosecution is not supposed to meet every hypothetical question raised by the defence. If the prosecution is required to meet every fanciful plea, it would be a clear case of deflecting the course of justice. If crime is to be punished in a glosseme way niceties must yield to realistic appraisal. Law would fail to protect the community if it admitted fanciful possibilities to deflect, the course of justice."

12. In Vijay Pal Singh vs. State of NCT of Delhi 2001 (1) Supreme (Cr.) 582 the Apex Court held that no fixed pattern of natural conduct can be laid down as different witnesses would react in different manner in same situation.

13. In Main Pal vs. State of Haryana 2004(1) Supreme (Cr.) 630 it was observed that it was wrong to discard prosecution case on the ground of unnatural conduct of father of the deceased, who instead of remaining on spot when his son was being shot by firearm, had run away.

14. In State of U.P. vs. Devendra Singh (2004) 1 Supreme (Cr.) 690 it was held that evidence of witness can not be discarded on the ground that he did not react in a particular manner.

15. Having considered the material on record in its full conspectus and whittled down testimony of witnesses by specious reasoning we find

that the questions emerged in the instant case can not be termed as hypothetical. It is difficult to believe that the accused who had enmity with Bajranglal would spare him and instead kill his wife. It is also surprising that dead body was found stark naked whereas no prosecution witness had stated that when the accused took Chhoti to the well she was naked. Evidently informant Bajrang Lal did not give any trouble to the Investigating officer. Much before his arrival the dead body of Chhoti was taken out of the well by one Shri Ram and the report was drawn by one Sanwra. The prosecution however did not choose to examine Shri Ram and Sanwra. An attempt was made at the trial to establish that nick name of witness Shyam Lal was Shri Ram but Shyam Lal did not say this fact in his statement.

16. It is difficult to believe that after inflicting injuries on the person of Chhoti inside the house, the accused would have lifted her and traveled fifty yards upto the well to show the neighbours that they had committed offence.

17. Doubts emerge in the case on hand are free from zest for abstract speculations. They are actual and substantial doubts as to the guilt of the accused persons arising from the evidence, or from the lack of it, as opposed to mere vague apprehension. They have grown out of the evidence and based upon reasons and commonsense.

18. The defence of the appellants from the very beginning of the case was that it was informant Bajrang Lal who liquidated his wife and pushed her into well. Learned counsel for the appellants made attempt to

probablise the defence theory and we have considered the probabilities appear in the case. In our opinion following unanswered questions cause dent in the prosecution case.

(i) Why dead body of Chhoti was found stark naked?
(ii) Why Bajrang Lal despite enmity was left alive and Chhoti alone was done to death.
(iii) Why FIR was sent to the court of Ilaqa Magistrate after four days.

19. The importance of FIR cannot be under-estimated because it is the first version coming to the knowledge of the police and setting its machinery in motion. It is for that reason that it has been provided under section 157 of the Code of Criminal Procedure that the FIR should be sent forthwith to the Ilaqa Magistrate. This provision of law is to safeguard against any embellishment and concoction that may be subsequently made by the Investigating officer. When there is an unexplained delay in sending the FIR, inference may be drawn that the FIR was lodged later than the stated time. In the case on hand as already noticed FIR was registered on January 11, but it reached to the Court of Ilaqa Magistrate on January 15. Undeniably the Police Station and the Court of Magistrate situated in front of each other.

20. Having tested the evidence for its inherent consistency and the inherent probability of the story, the eye witness account does not appear to us credible and trustworthy. The shortcomings of prosecution case as discussed herein above escaped notice of learned trial Judge and the impugned finding deserves to be set aside.

21. For the reasons aforementioned we allow the appeal and set aside the impugned judgment dated September 24, 2002 of learned Additional Sessions Judge (Fast Track) Sikar. We acquit the appellants Dhanni Devi, Mohini Devi, Raju @ Rajendra and Mohan Lal of the charges under sections 148, 452, 302/149, 201, 323 and 323/149 IPC. The appellants Dhanni Devi and Mohini Devi are on bail, they need not surrender and their bail bonds stand discharged. Appellants Raju @ Rajendra and Mohan Lal, who are in jail, shall be set at liberty forthwith, if they are not required to be detained in any other case.

(R.S.Chauhan),J. (Shiv Kumar Sharma)J.

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